

## ENVIRONMENTAL HUMAN RIGHTS PROTECTION THROUGH THE EXTENDED JURISDICTION OF HUMAN RIGHTS COURT INDONESIAN CASES

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### Abstract

*The notion of environmental human rights derived from Principle 1 of the 1972 Stockholm Declaration has been adopted into domestic laws of many countries. In Indonesia environmental human rights is a constitutional right guaranteed under Article 28 H of the 4th amendment of the 1945 Constitution and is protected under Law of 2009 Law No. 32 on Environmental Protection and Environmental Management and Law of 1999 No. 39 on Human Rights. Many have written to argue that violation to environmental rights will also impair human rights and that cases may be submitted to Human Rights Court for adjudication. In Indonesia, environmental cases submission to Human Rights Court is seen to be impossible since they are inconsistent with the Law of 2000 No. 26 on Human Rights Court. Also, many verdicts of the District Courts reflect the hesitation of the judiciary in interpreting the people's environmental rights in Indonesia. Using the comparative approach, this paper will observe and analyse the possibility of extending the jurisdiction of Indonesian Human Rights Court to include environmental matters similar to that undertaken by the European Human Rights Court in handling environmental matters. This paper will offer suggestions on human rights mechanisms that should be considered in solving environmental conflict in Indonesia.*

**Keywords:** *environmental rights, Indonesian Environmental Management Act, environmental declarations, Indonesian Human Rights Act, human rights conventions, European Human Rights Court, environmental cases*

## I. Introduction

Principle 1 of the 1972 Stockholm Declaration is important for today's situation since many environmental cases have threatened the existence of the human race. Environmental rights enjoyment is equal as the basic human rights enjoyment. The disturbance to the former rights will be the impairment to the latter rights. Keeping the human beings' relationship to the environment beneficial to present and future generations. This paper discusses: the extent environmental declarations provide the concept of and the definition of environmental human rights; the extent of the spirit of environmental human rights has been manifested into national law, and the extent Indonesian Human Rights Court has jurisdiction over the environmental cases.

## II. Environmental Human Rights in Environmental Declarations and International Bill Of Human Rights

The 1972 Stockholm Declaration on Human Environment is the landmark of the environmental human rights awareness.<sup>1</sup> The nexus of environmental rights to human rights<sup>2</sup> implies everyone's obligation to safeguard the environment.<sup>3</sup> Human rights instruments are well recognized and have been implemented at international, regional and national levels<sup>4</sup> and the increased industrial activities have resulted in environmental pollution and environmental degradation.<sup>5</sup> However, no definition of environmental human rights in the Declaration as well as in at least 55 countries have no definition in their provisions on environmental human rights, *inter alia*, the Indonesian Environmental Law,<sup>6</sup> the constitution of The Republic of Belarus,<sup>7</sup>

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<sup>1</sup> Paolo Galizzi, "From Stockholm to New York, via Rio and Johannesburg: Has the Environment Lost its Way on the Global Agenda?" (2005) *Fordham International Law Journal* (29) 5.3, pp. 952-1008.

<sup>2</sup> Principle I stressed that "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations." (UN Doc A/CONF/48/14/REV.1 (1972))

<sup>3</sup> Principle 2 (UN Doc A/CONF/48/14/REV.1 (1972))

<sup>4</sup> M. Thorne, "Establishing Environment as a Human Right", (1990-1991) 19 *Denv. J. Int'l L. & Pol'y*, pp 301-342.

<sup>5</sup> Koesnadi Hardjasoematri, 1983 *Hukum Tata Lingkungan*, Gadjah Mada University Press, p. 362., H. G. Lorin MD and E.J. Kulling MD, "The Bhopal Tragedy- What has Swedish disaster medicine planning learned from it", (1986) *Journal of Emergency Medicine*, v. 4 (4), pp. 311-316.

<sup>6</sup> Art. 65 (1) of the 2009 EMA No. 32 State Gazette 2009 No. 140.

<sup>7</sup> Art. 46 (Environment), Belarusian Constitution, Adopted 1994, [home pageonline] : Available from <http://www.belarusguide.com>).

Brazil,<sup>8</sup> the French,<sup>9</sup> Republic of Georgia,<sup>10</sup> Norway,<sup>11</sup> Slovenia,<sup>12</sup> Argentina,<sup>13</sup> Chile,<sup>14</sup> Costa Rica,<sup>15</sup> Cuba,<sup>16</sup> Ecuador,<sup>17</sup> El Salvador,<sup>18</sup> Honduras,<sup>19</sup> Nicaragua<sup>20</sup> and Paraguay.<sup>21</sup> There are only five ASEAN members countries<sup>22</sup> have the environmental human rights stipulated in their national environmental legislations. Yet the definition of and how to implement that rights remained absent. This statement needs implementing legislation to make it into reality. Notwithstanding, it is strong indicators of national *opinio juris* and represents the highest level of national law operating as a *lex suprema*<sup>23</sup> to fuse environmental human rights values into national constitutions.

The Environmental human rights notion is in the process of growing into international law. The progressive development of environmental human rights is found in the regional human right conventions, but absent of the definition of the term.<sup>24</sup> Environmental declaration is a soft law and contained

<sup>8</sup> Chapter VI: Environment. Art. 225, The 1988 Constitution of the Federative Republic of Brazil)

<sup>9</sup> Art. 1 – Everyone has the right to live in a balanced environment which respects health. (More detail, see: D. Marrani, “The Second Anniversary of the Constitutionalisation of the French Charter for the Environment: Constitutional and Environmental Implications,” 10 *Envtl.L. Rev.* 9 (2008)

<sup>10</sup> The Georgia Constitution, Adopted on 24 August 1995, and last amendment 27.12.06 states in Article 37 (3). ([home page online]: Available from <http://www.parliament.ge>)

<sup>11</sup> Article 110 (b) of The Norwegian Constitution. ([home page online]: Available from <http://www.stortinget.no>)

<sup>12</sup> Article 72 (Healthy Living Environment) of The Slovenian Constitution adopted on 23 Dec. 1991 and amended on 14 July 1997, 25 July 2000, 7 March 2003, 15 June 2004, 20 June 2006. ([home page online]: Available from <http://www.servat.unibe.ch>)

<sup>13</sup> Section 41.- The 1994 Argentina Constitution) ([home page online]: Available from <http://www.hrcr.org/chart/annotations&references/Argentina.html>)

<sup>14</sup> Art. 19 Para. 8.- 1980 Constitution of Chile.

<sup>15</sup> Art. 50. Para. 2 Constitution of The Republic of Costa Rica, as amended by Article 1°, Law No. 7412, June 3, 1994. ([home page online]: Available from [http://www.costaricalaw.com/constitutional\\_law/constitution\\_en.php](http://www.costaricalaw.com/constitutional_law/constitution_en.php))

<sup>16</sup> Art. 27. Constitution of the Republic of Cuba, 1992) ([home page online]: Available from [http://www.cubanel.org/ref/dis/const\\_92\\_e.htm](http://www.cubanel.org/ref/dis/const_92_e.htm)).

<sup>17</sup> Art. 14. (Constitution of the Republic of Ecuador) ([home page online]: Available from <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>)

<sup>18</sup> Art. 69 (Constitution of the Republic of El Salvador, 1983 (as Amended to 2003) ([home page online]: Available from <http://pdba.georgetown.edu/constitutions/elsal/elsalvador.html>).

<sup>19</sup> Art. 145 Constitution of the Republic of Honduras 1982 (Updated through the Decree 36 of May 4 2005) ([home page online]: Available from <http://www.honduras.com/honduras-constitution-english.html>)

<sup>20</sup> Art. 60 Nicaraguan Constitution of January 9 1987. ([home page online]: Available from <http://janda.org/politxts/Major%20Democratic%20Documents/nicaragua.htm>).

<sup>21</sup> Art. 7 (1) Paraguay Constitution, adopted 20 June 1992) ([home page online]: Available from [http://www.servat.unibe.ch/icl/pa00000\\_.html](http://www.servat.unibe.ch/icl/pa00000_.html))

<sup>22</sup> Such as Indonesia, Burma, Philippines, Thailand and Vietnam

<sup>23</sup> Ole W. Pedersen, “European Environmental Human Rights and Environmental Rights: A Long Time Coming?” 21 *Geo.Int'l Env'tl.L.Rev.* (2008): 73.

<sup>24</sup> Article 11 of the 1988 San Salvador Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Richard Desgagné, ‘Integrating Environmental

only political commitment of the states during the conference. Some terms the scholars offered like: "decent environment", "healthy environment", <sup>25</sup> "safe environment", <sup>26</sup> "balanced environment", <sup>27</sup> "secure environment", "satisfactory environment", "adequate environment", "clean environment", "pure environment", "natural environment", "viable environment", "ecological sound", "ecologically-balanced" <sup>28</sup> but, nevertheless, the terms are vague, diverse, controversial, and ever-changing <sup>29</sup> and assumed to be quoted from the national constitutions above. It is still argue whether it includes the rights of land, water, air being free from pollution, including the right to enjoy the un-spoilt nature <sup>30</sup> or does it just pure human rights, pure economy or purely environment (ecology). <sup>31</sup>

Environmental human rights are broad covering all aspect of human life. <sup>32</sup> The 1972 Stockholm Declaration, <sup>33</sup> however, is important that in the Rio of 1992 on Environment and Development <sup>34</sup> is restated but not the notion of environmental human rights. <sup>35</sup> The sustainability of the development achieved if not degraded and polluted the environment. For that the 2002

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Values into the European Convention on Human Rights', 89 *Am. J. Int'l*, (1995): 263-294. See also: Dona Gomien, *Short Guide to the European Convention on Human Rights*, Council of Europe, Strasbourg 1995; Thomas Buergental, *International Human Rights* (West Publishing Co. 1995), 102-105, and Art. 16 (1) African Charter of Human and People's Rights adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986) retrieved from [www.africa-union.org](http://www.africa-union.org)).

<sup>25</sup> The term proposed by the Government of the Federal Republic of Germany to the additional protocol to the European Convention on Human Rights in 1973 (Melissa Thorne, "Establishing Environment As a Human Rights", 1990-1991 19 *Denv. J. Int'l L. & Pol'y* 301-342.

<sup>26</sup> James W. Nickel, "The Human Rights to a Safe Environment: Philosophical Perspectives on Its Scope and Justification", 18 *Yale J. Inter'l L.* 281-993.

<sup>27</sup> The French Constitution amended in 2005 includes Charter of the Environment (Ole W. Pedersen, "European Environmental Human Rights and Environmental Rights: A Long Time Coming", 2008 21 *Geo. Int'l Envtl. L. Rev.* 73.

<sup>28</sup> Luis E. Rodriguez-Rivera, 'Is the Human Rights to Environment Recognised Under International Law? It Depends in the Source', (Winter 2001) 12 *COLO. J. INT'L ENVTL. L. & POL'Y* 1.

<sup>29</sup> Luis E. Rodriguez-Rivera, 'Is the Human Rights to Environment Recognised Under International Law? It Depends in the Source', (Winter 2001) 12 *COLO. J. INT'L ENVTL. L. & POL'Y* 1.

<sup>30</sup> R.R. Churchill, "Environmental rights in existing human rights treaties", in Alan Boyle, 1996 *Human Rights Approaches to Environmental Protection*, Clarendon Press-Oxford, pp 91-108.

<sup>31</sup> M. Thorne, 'Establishing Environment As a Human Right', (1990-1991) 19 *Denv. J. Int'l L. & Pol'y* 301., J. W. Nickel, 18 *Yale J. Int'l L.* 283., R. F. Dasmann, (1975) *The Conservation Alternative* (4<sup>th</sup> ed.), New York: Wiley, Daniel D. Chiras, *Environmental Science: A Framework for Decision Making*, The Benjamin Cummings Publishing Company, Inc. 2727 Sand Hill Road, Menlo Park, Ca 94025, p. 42.

<sup>32</sup> Report of the World Population 2001: Footprints and Milestones: Populations and Environmental Change, United Nations Population Fund - UNFPA, 2001( Suili Giorgetta, (2002) "The Right to a Healthy Environment, Human Rights and Sustainable Development", *International Environmental Agreements: Politics, Law and Economics* 2: 173-194, Kluwer Academic Publisher, Printed in the Netherlands).

<sup>33</sup> Principle I (UN Doc. A/CONF. 48/14 REV. I. Adopted by UNGA Res. 2997 (XXVII) of 1972).

<sup>34</sup> Adopted at the 17th plenary meeting of the World Summit on Sustainable Development, on 4 September 2002. A/CONF.151/26 (Vol. I).

<sup>35</sup> Principle I (Rio Declaration, A/CONF.151/26 (Vol. I)).

Johannesburg Declaration<sup>36</sup> encourages the integrated action towards economic growth and equity, conservation of natural resources and the environment, and social development. The Johannesburg Declaration also recalls Principle 1 of the Rio Declaration, and also the values and the goals of the United Nations Millennium Declaration.<sup>37</sup>

The environmental declaration is a soft law<sup>38</sup> but Principle 1 needs to be actualized into norm.<sup>39</sup> The Aarhus Convention of 1998<sup>40</sup> makes the two Declarations into reality. The State Party to the Aarhus Convention guarantees the rights of access to information, public participation in decision-making, and access to justice in environmental matters.<sup>41</sup> Only countries in the Europe and central Asia have ratified the Aarhus Convention. The Aarhus Convention is open for states' ratification.

The concept of environmental human rights is not in existence in international human rights instruments. The World Wars have created international awareness of human rights, whereas the world environmental problems have twisted the world environmental awareness during the Stockholm Conference in 1972. However saving the environment is also saving human race. International human rights instruments (the Charter of the United Nations, the UDHR,<sup>42</sup> the ICCPR<sup>43</sup> and the ICESCR<sup>44</sup> and two Optional Protocols to the ICCPR<sup>45</sup> and ICESCR)<sup>46</sup> are universally adopted into national laws of various countries. Lack of legal formulation of environmental human rights<sup>47</sup> may be due to its linkage to human rights. Human rights perceptions are divergence and sensitive issue for some countries.<sup>48</sup>

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<sup>36</sup> A/CONF. 199/L. 6/REV.2<sup>37</sup> The Millennium adopted by 189 world leaders, and has eight chapters and key objectives that should be achieved by the year 2015. ([http://en.wikipedia.org/wiki/United\\_Nations\\_Millennium\\_Declaration](http://en.wikipedia.org/wiki/United_Nations_Millennium_Declaration)).

<sup>38</sup> P.M. Dupuy, 'Soft Law and the International Law of the Environment', (1990-1991) 12 *Mitch. J. Int'l L.* pp. 420-435.

<sup>39</sup> There are about 55 countries have adopted environmental right into their national environmental law. See: Edith Brown Weiss, "In Fairness To Future Generations" 297-327 in: V. Cheng Yang, 'Punishing For Environmental Protection? - Enforcement Issues in China', (1995) 44 *Int'l L & Comp. L.Q.* 674.

<sup>40</sup> Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters which arranged in Aarhus Denmark in 1998. UN Doc. ECE/CEP/43 (1998).

<sup>41</sup> See: Article 1 of the 1998 Aarhus Convention (UN Doc. ECE/CEP/43 (1998).

<sup>42</sup> G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

<sup>43</sup> G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

<sup>44</sup> G.A. res. 2200A (XXI) of 16 December 1966

<sup>45</sup> G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, entered into force March 23, 1976.

<sup>46</sup> UN document E/CN.4/2001/62/Add.2)

<sup>47</sup> Principle 1.

<sup>48</sup> The Western universal human rights named radical universal human rights and the radical relativism of Eastern cultural of human rights (Jack Donnelly, "Cultural Relativism and Universal



The Human rights notion is a 20<sup>th</sup> century concept promoting worldwide may only be achieved through international cooperation in economy, social, and humanitarian problems.<sup>49</sup> Yet the notion of environmental human rights is not exist in the international human rights instruments. The world condition after the Second World War pays less attention to the environment.<sup>50</sup> However the right to life as it is manifested in the International Bill of Human Rights may be interpreted as the environmental human rights for it is basic human rights and relate to other aspect of human rights.

### III. Environmental Matters Resolution Under Human Right Court

The interconnection of environmental human rights is quite apparent<sup>51</sup> for environment is everyone's backyard<sup>52</sup> and Ruppel<sup>53</sup> and Povopic<sup>54</sup>

Human Rights", 1984 *Human Rights Quarterly*, Vol. 6. No. 4, (Nov), pp. 400-419, Fernando R. Tesón, "International Human Rights and Cultural Relativism, (1984-1985) 25 V a J. Int'l L. 869-901, Diana Ayton- Shenker, 1995 *The Challenge of Human Rights and Cultural Diversity*, United Nations Background Note, Published by the United Nations Department of Public Information DPI/1627/HR-March, Abdullahi Ahmed An Na'im, 1992 *Human Rights in Cross-Cultural Perspective: A Quest for Consensus*, University of Pennsylvania Press). Diana Ayton- Shenker: "the cultural relativism of human right would pose a dangerous threat to the effectiveness of international law and the international system of human rights that has been painstakingly constructed over the decades. If cultural tradition alone governs State compliance with international standards, then widespread disregard, abuse and violation of human rights would be given legitimacy"(Diana Ayton- Shenker, 1995 *The Challenge of Human Rights and Cultural Diversity*, Published by the United Nations Department of Public Information DPI/1627/HR-March).

<sup>49</sup> Art. 1 (3), UN Charter of 1945.

<sup>50</sup> In addition, the Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities has shown particular concern for the development of environmental human rights, and the further evolution of the right under customary international law. In connection to environmental human rights, there is a 1989 UN. Convention on the Right of the Child expressly refers to environmental quality in Article 29 (1)(e) on the right to health (The Convention adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49 (G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2 1990).

<sup>51</sup> See: Fatma Zohra Kesentini's report entitle "Review of Further Developments in the Fields of Human Rights and the Environment" submitted to the Forty-sixth session of the Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities (between year 1992 and 2001); Mohammed Sahnoun, "Environnement et développement", *Revue algérienne des relations internationales*, No. 8, 1987, OPU, Algies in: Mrs. Fatma Zohra Kesentini Report in E/CN.4/Sub.2/1994/9 6 July 1994; B. Hill, S. Wolfson, & N. Targ, Human Rights and the Environment: A Synopsis and Some Predictions, (2004) 16 *Geo. Int'l Envtl. L. Rev.* 359, 399-400; Sumudu Atapattu, "The Right to a Healthy Life or the Right to Die Polluted?, The Emergence of a Human Rights to a Healthy Environment Under International Law, (2002) 16 *Tul. Envtl. L. J.* 65, 68.

<sup>52</sup> N. A.F. Popovic, "In Pursuit of Environmental Human Rights: Commentary on the Draft Declaration of Principles on Human Rights and the Environment", (1996) 27 *Colum. Human Rights L. Rev.* 487.

<sup>53</sup> Ruppel reviewed environmental problems from the angle of third-generation of human rights or solidarity rights (A. Kiss & D. Shelton. 2004. *International environmental law*. Ardsley, NY: Transnational Publishers, p 12ff, in: O.C Ruppel, 'Third-generation of human rights and the protection of the environment in Namibia' (<http://scholar.google.com.my/scholar>)).

<sup>54</sup> N. A.F. Popovic, "In Pursuit of Environmental Human Rights: Commentary on the Draft Declaration of Principles on Human Rights and the Environment", 487.

concluded that human rights violation is the impairment of environment.<sup>55</sup> Prior 1972 the European Convention on Human Rights where the European Social Charter and Additional Protocols<sup>56</sup> did not provide for the provision on environmental rights.<sup>57</sup> The global concern of environment emerged when the United Nations arranged the Stockholm Conference in 1972 changed the Commission's view that polluted environment is also affected the full enjoyment of individual's rights and freedoms as guaranteed by the Convention.<sup>58</sup>

Similar situation as in Indonesian Human Rights Court<sup>59</sup> is authorized to examine and to decide upon the gross human rights violation"<sup>60</sup> covering

<sup>55</sup> Rights in this category include self-determination, the right to peace, the right to a healthy environment, and the right to inter-generational equity which include the right to development (Oliver C. Ruppel, 'Third-generation of human rights and the protection of the environment in Namibia' (<http://scholar.google.com.my/scholar>)); Giorgetta tried to look at the correlation among the environmental rights, human rights, and concept of sustainable development that the sustainable development could not be realized if the implementation of such development programs always impairs the environmental rights (S. Giorgetta, "The right to a healthy environment, human rights and sustainable development" (2002) 2 *International Environmental Agreements: Politics, Law and Economic* pp. 173-194); Chen and Dong discussed environmental rights from the perspective of development without impairing the environment which is called "eco-development" concluded that environmental rights might become safeguarded and defended human rights and ultimately facilitate producing better conditions of life on earth by stretching and expanding the theory of traditional human rights. (C. Demin, and D. Zhengaia, 'Environmental rights: on the perspective of harmonious development between human beings and nature', Law School of Chongqing University, Chongqing 400044, China (2008) 18 (1) *China Population, Resources and Environment*, pp 189-192).

<sup>56</sup> This paper only takes one example the practice in the Europe before and after the 1972 Stockholm Declaration.

<sup>57</sup> Environmental cases rejected by the Commission of the European Council as being incompatible with the Convention. See: *Dr S. v. the Federal Republic of Germany*,

<sup>57</sup> *X and Y v. the Federal Republic of Germany*. Application No. 7407/76, Decision of inadmissibility of 13 May 1976.

<sup>58</sup> A number of environmental cases brought to European Human Rights Court afterwards for example: *Arrondelle v. the United Kingdom* (noise), Application No. 7889/77, Decision of 15 July 1980, DR 19, p. 186; *G. and Y. v. Norway* (not specified by applicants), Application No. 9415/81, Decision of 3 October 1983, DR 35, p. 30; *Baggs v. the United Kingdom* (noise), Application No. 9310/81, Decision of 19 January 1985, DR 44, p. 13; *Powell and Rayner v. the United Kingdom* (noise), Application No. 9310/81, Decision of 16 July 1986, DR 47, p. 22; *Vearncombe and others v. the Federal Republic of Germany* (noise), Application No. 2816/87, Decision of 18 January 1989, DR 59, p. 186; *X v. France* (noise and other inconvenience), Application No. 13728, Decision of 17 May 1990; *Zander v. Sweden* (water pollution), Application No. 14282/88, Decision of 14 October 1992, *Hakansson and Sturesson v. Sweden* (Application No. 11855/85, Decision of admissibility of 15 July 1987, *Fredin v. Sweden* (Application No. 12033/86, Decision of admissibility of 14 December 1987), Application No. 12033/86, Decision of admissibility of 14 December 1987 (Application No. 12033/86, Decision of admissibility of 14 December 1987-1987) (More detail see: Daniel García San José, 2005 *Environmental Protection and The European Convention on Human Rights*, Council of Europe Publishing, p 7). Another cases, for instance: *Hakansson and Sturesson v. Sweden* (1987).

<sup>59</sup> The 2000 Law No. 26.

<sup>60</sup> The 2000 Law No. 26 on Human Rights Court, State Gazette 2000 No. 208.

crime of genocide and crime against humanity.<sup>61</sup> Article 8<sup>62</sup> and Article 9<sup>63</sup> declare that environmental matters are incompatible to the provisions in the 2000 Law No. 26.<sup>64</sup> The possibility is to extend the Human Rights Court jurisdiction to include the environmental rights violation as crimes against humanity.<sup>65</sup> It seems too good to be true for Indonesian context it needs a political consensus amongst the politicians and also the Indonesian Parliament to reform the 2009 EMA No. 32 and the 2000 law on Human Rights Court No. 26.

#### IV. Concluding Remarks

Many domestic laws provide no definition of environmental human rights definitions as well as international Bill of Human Rights. The world human rights awareness emerged in 1945 affecting in the less attention of the human rights instruments to environmental matters.

Environmental human rights are intertwined that saving environment is also saving human rights. Violation to environmental rights will be the impairment to human rights. The sustainable development will not be reached if the development carried out always impairs the environment.

The 1972 Stockholm Declaration on Human Environment had been acknowledged the environmental human rights. The right to life is the central enjoyment of environmental human rights and also nexus to other element of human rights. Thus violation to environmental rights will be the violation of human rights. Here the Human Rights Court may be the right place for people seeking law protection.

Indonesian Human Rights Law of 1999 No. 39 and the Law of 2000 No. 26 do not have provision to enable human rights issues submission. A clear and

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<sup>61</sup> Art. 7 State Gazette 2000 No. 208.

<sup>62</sup> Article 8 declares that Crimes of genocide as defined in Article 7 letter (a) is any action committed with intent to destroy or exterminate in whole or in part group of nations, races, ethnic groups, religious groups, by the way (a) killing members of the group; (b) causing serious bodily or mental harm to members groups; (c) create the conditions of life that would lead obliteration physically in whole part or in part; (d) imposing measures intended to prevent births within the group; or (e) forcibly transferring children of a particular group to another group. (State Gazette 2000 No. 208).

<sup>63</sup> Article 9 says that Crimes against humanity as defined in Article 7 letter (b) may include any actions committed as part of a widespread or systematic which are knowingly that the attack is directed against te civilian population in form of (a) murder; (b) extermination; (c) slav ery; (d) expulsion or forcible transfer of population; (e) deprivation of liberty other physical arbitrary in violation of (the principles) provisions of international law (f) torture; (g) rape, sexually slavery, forced prostitution, forced pregnancy, sterilization by force or other forms of other sexual violence are equivalent; (h) persecution of a particular group or association that is based equation political beliefs, race, nationality, ethnicity, culture, religion, sex or other reason that have been recognized as contravening according to international law; (i) enforced disappearances; or (j) the crime of apartheid. (State Gazette 2000 No. 208).

<sup>64</sup> See: footnotes 103 and 104.

<sup>65</sup> Art 9.



bold statement of the Indonesian Human Rights Commission as practiced by the European Commission of Human Rights post the 1972 Stockholm Declaration declaring the polluted environment is also affected the full enjoyment of individual's rights and freedoms as guaranteed by the 1998 Law No. 39. Amendment to Human Rights Law of 1999 and Human Rights Court of 2000 to include decent environmental as one elements of the existing human rights will be one way or another to protect the people's right to a clean and healthy environment.

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